

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PERICLES CLERGEAU,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et
al.,

Defendants.

Civil Action No. 23-cv-12216-DJC

ORDER

CASPER, J.

November 1, 2023

Pro se plaintiff Pericles Clergeau brings this action in which he alleges correction officers at the Souza-Baranowski Correctional Center violated his rights under the Eighth Amendment. Now pending before the Court are Clergeau's motion for leave to proceed *in forma pauperis*, D. 4, motion for permission to serve the defendants by regular first-class mail, D. 6, and motion to have service completed by the United States Marshals Service, D. 7.

Upon review of these motions, the Court hereby orders:

1. The motion for leave to proceed *in forma pauperis*, D. 4, is DENIED. The fee for commencing a non-habeas action is \$402. Clergeau's prison account statement, D. 5, dated October 20, 2023, indicates that he has over \$6,500 in his prison account. He has sufficient funds to prepay the filing fee. If Clergeau wishes to proceed with this action, he must, no later than November 29, 2023, pay the \$402 filing fee or show good cause why he should not be required to do so. Failure to comply with this Order likely will result in dismissal of the action.

2. The motion for permission to serve Defendants by regular first-class mail, D. 6, is DENIED. If summonses issue, Clergeau will be required to serve them in accordance with Rule 4 of the Federal Rules of Civil Procedure, which does not provide for service of a summons by regular mail. In the alternative, if summonses issue Clergeau may ask a defendant to waive service of summons. See Fed. R. Civ. P. 4(d). Such a request may be sent by regular mail.

3. The motion to have service completed by the United States Marshals Service, D. 7, is DENIED. The Court may order the United States Marshals Service to effect service when a party has been permitted to proceed *in forma pauperis*, see Fed. R. Civ. P. 4(c)(3), but Clergeau is not proceeding *in forma pauperis*. As noted above, if summonses issue, Clergeau may ask a defendant to waiver service of summons. Further, “[a]ny person who is at least 18 years old and not a party may serve a summons and complaint.” Fed. R. Civ. P. 4(c)(2). A special process server is not required.

So Ordered.

/s Denise J. Casper
United States District Judge